



Roll Call Number

Agenda Item Number

EX 1 A

Date June 8, 2020

An Ordinance entitled, "AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by adding Article III, Sections 86-42, 86-43, 86-44, 86-45, 86-46, and 86-47, regarding unbiased policing policy",

presented.

Moved by _____ that this ordinance be considered and given first vote for passage.

FORM APPROVED:

(First of three required readings)

/S/ Douglas P. Philip

Douglas P. Philip
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
GRAY				
MANDELBAUM				
VOSS				
WESTERGAARD				
TOTAL				

CERTIFICATE

I, P. Kay Cmelik, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

MOTION CARRIED

APPROVED

Mayor

City Clerk

ORDINANCE NO. _____

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by adding Article III, Sections 86-42, 86-43, 86-44, 86-45, 86-46, and 86-47, regarding unbiased policing.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, is hereby amended by adding Article III, Sections 86-42, 86-43, 86-44, 86-45, 86-46, and 86-47, regarding unbiased policing, as follows:

Article III. Unbiased Policing

86-42. Policy Statement.

86-43. Definitions.

86-44. Procedures.

86-45. Complaints & Compliance.

86-46. Training.

86-47. Annual Review.

ARTICLE III. UNBIASED POLICING

Sec. 86-42. Policy Statement.

The **City of Des Moines and the** Des Moines Police Department shall be committed to the unbiased, equitable treatment of all. Department employees shall treat all in a fair, impartial and objective manner, in accordance with law, and without consideration of their individual demographics as defined in this **Article**.

Sec. 86-43. Definitions.

Definitions. The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Article, except where the context clearly indicates a different meaning:

Biased Policing means differential treatment in the performance of law enforcement duties or delivery of police services toward an individual or classes of individuals when one or more individual demographics was a motivating factor in the action taken. If an individual's race, color, ethnicity, religion or national origin played a motivating factor in the city employee's decision, then that personal characteristic was a motivating factor of the action taken.

Fair and Impartial Treatment means persons, irrespective of individual demographics, are treated in the same basic manner under the same or similar circumstances. Reasonable concessions and accommodations may be made, when dealing with individuals with physical, developmental or mental disabilities, injury, illness, deafness, blindness, substance abuse disorders or similar conditions, primary language, cultural background, and youthful age, or when information about them legally necessitates different treatment.

Individual Demographics means personal characteristics to include, but not limited to: race, creed, color, ethnicity, national origin, ancestry, religion, age, gender, sex, gender identity/expression, sexual orientation, socioeconomic status, disability, immigration status, familial status, housing status, occupation, language fluency, cultural group, political status, or source of income, or any other identifiable characteristics.

Police Services means actions and activities that contribute to the overall well-being and safety of the public. These tasks include but are not limited to: crime prevention and investigation, preventive patrol, traffic control, traffic accidents, medical emergencies and lifesaving services, assistance at fire scenes, public information and education.

Racial Profiling means that form of biased policing where a motivating factor of the action taken is based on an individual's race, color, ethnicity, religion or national origin rather than on the individual's behavior or on information of the type and kind customarily and reasonably relied upon in identifying the individual as having engaged in prohibited activity. Racial profiling includes but is not limited to vehicle, pedestrian, and bicycle stops where race, color, ethnicity, religion or national origin was a motivating factor for the stop or enforcement action taken during the stop. Illegal discriminatory pretextual stops under state or federal law are prohibited by this ordinance.

Specific subject description-based identification means a reasonably detailed physical description of the personal identifying characteristics of a potential suspect or victim, including but not limited to age, sex, ethnicity, race, or English language proficiency.

Sec. 86-44. Procedures.

(a) Fair & Impartial Treatment

(1) Biased policing is prohibited both in enforcement of the law and the delivery of police services by any employee.

(2) Racial Profiling is prohibited both in enforcement of the law and the delivery of police services by any employee.

(3) Employees shall exercise their authority and act to accord fair and impartial treatment to all persons.

(4) Employees shall not consider individual demographics when performing law enforcement duties or delivering police services except when such characteristics are part of a specific subject description-based identification.

(5) Employees shall not use any terms, language or remarks that are derogatory, tend to belittle, show contempt for or defame any individual demographic, except when necessary to include such terms, language or remarks used by another for the preparation of official reports or testimony.

(6) Employees must be able to articulate reasonable suspicion or probable cause supporting any police action.

(7) Employees shall not take any law-enforcement action based on information from members of the public or other employees that they know or reasonably should know under all circumstances present is the product of, or motivated by, bias based on individual demographics unless the circumstances indicate that harm is imminent or a crime has been committed.

Sec. 86-45. Complaints & Compliance.

(a) Any person claiming to be aggrieved or to have witnessed biased policing or racial profiling may file a complaint. No person shall be discouraged, intimidated, or coerced from filing such a complaint, nor shall any person be discriminated or retaliated against because they have filed a complaint of this nature.

(1) Employees who witness or who are aware of instances of biased policing or racial profiling shall report the incident to a supervisor and shall provide all information known to them before the end of the shift during which they make the observation or become aware of the incident or as soon thereafter as practicable under the circumstances. Where appropriate, employees are encouraged to intervene at the time the biased policing or racial profiling incident occurs and shall report such biased policing or racial profiling to a supervisor as soon as practicable under the circumstances.

(2) Any employee who opposes any practice occurring in violation of this Article shall not be discriminated against in any manner for opposing such practice, testifying, assisting or participating in any investigation, proceeding or hearing arising out of this Article.

(b) Supervisors shall ensure the working environment is free of bias and free of racial profiling. This oversight responsibility may include periodic inspections of body and in-car audio/video

systems, traffic stop data, reports and field inspections during police/citizen interactions. Supervisors shall:

- (1) Take the appropriate action when a violation of this Article occurs.
- (2) Ensure that there is no retaliation for individuals reporting such violations.

(c) All complaints of biased policing or racial profiling shall be directed to the department's Office of Professional Standards (OPS) or the Des Moines Civil and Human Rights Commission, or to both. If directed to the Civil and Human Rights Commission, the Commission shall perform an intake function and also notify OPS. If directed to OPS, OPS shall perform an intake function and notify the Des Moines Civil and Human Rights Commission of the filed complaint. While the Civil and Human Rights Commission will not have jurisdiction to investigate or adjudicate alleged violations of this ordinance, the commission staff shall educate the public about the complaint process and shall offer to assist, and shall assist individuals in preparing and filing a biased policing or racial profiling complaint with the Iowa Civil Rights Commission. The Iowa Civil Rights Commission has jurisdiction over racial profiling complaints against law enforcement as such complaints allege discrimination in public accommodations by a local government unit that offers services to the public based on the individual demographics prohibited by the Iowa Civil Rights Act, Iowa Code Sec. 216.7. See also, Iowa Code Sec. 216.2(13) as now adopted or hereinafter amended.

(1) OPS will conduct a thorough investigation, consistent with the established citizen complaint process, for review by supervisory staff and the Chief of Police.

(2) If the complaint is substantiated, the department will take appropriate measures commensurate to the severity of the substantiated complaint.

(3) OPS shall maintain data relating specifically to complaints of biased policing and racial profiling. Information shall be provided to the Chief of Police or designated authority in a manner most suitable for administrative review, problem identification, and development of appropriate corrective actions to prevent biased policing and racial profiling.

Sec. 86-46. Training.

At least annually all sworn officers shall receive and participate in training and guidance in regard to unbiased policing and prohibited racial profiling while conducting law enforcement activities and police services, which training may include, but is not limited to: training on subjects related to police ethics, cultural diversity, de-escalation, cultural competency, police-citizen interaction, standards of conduct, conducting motor vehicle stops, implicit bias, and related topics suitable for preventing incidents of biased policing and racial profiling.

Sec. 86-47. Annual Review.

This topic and policy under this Article will be reviewed annually and the City Manager shall certify such review to the City Council no later than the first day of the fiscal year.

Section 2. Racial profiling and biased policing is a violation of this Article. Any penalty for violation of this new Article III related to any employee not acting in conformity therewith shall be limited to that provided under state or federal law, which violation may include serving as cause for discipline up to and including termination from employment as consistent with federal and state law requirements including Iowa Code Chapters 400 and 20 as applicable. The limitation related to violations of this new Article III related to employee violations of Article III is not intended to expand or limit any other remedy or cause of action available under state or federal law, nor to expand or restrict the time for seeking such remedy or cause of action and shall not be construed as doing so, nor as conferring jurisdiction on the Des Moines Civil and Human Rights Commission but, pursuant to § 86-45(c) Commission staff shall assist individuals who desire to file any complaint with to the Iowa Civil Rights Commission for investigation and resolution. The declaration of the prohibitions set forth in this Article shall not create any new or separate legal rights or claims by or on behalf of any third party and shall not be construed as a waiver, modification, or alteration of any available defense or governmental immunity of the city under federal or state law.

Section 3. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:

/S/ Douglas P. Philip

Douglas P. Philip
Assistant City Attorney